In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-892

LOUIS A. ZAMBRANO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Western District of Pennsylvania, petitioner was convicted of possession of goods known to have been stolen from interstate commerce, in violation of 18 U.S.C. 659. The goods consisted of chocolate products of the Nestle Company which were found in petitioner's possession approximately two weeks following the theft. The trial judge instructed the jury that it could infer petitioner's knowledge of the stolen character of the goods from his recent possession. Following the conviction, the district judge denied a motion for a new trial raising the question whether the instruction was permissible (Pet. App. 10-11).

The court of appeals affirmed *per curiam* rejecting the same contention (Pet. App. 12–13).

These rulings were proper. The federal courts have uniformly determined that an instruction such as was given here meets the test of rationality and hence does not infringe the Fifth Amendment. *E.g., Rugendorf* v. *United States*, 376 U.S. 528, 536–537; *Wilson* v. *United States*, 162 U.S. 613, 619–620; *United States* v. *Hood*, 422 F.2d 737, 741–742 (C.A. 7), certiorari denied, 400 U.S. 820.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

MARCH 1972.

U.S. GOVERNMENT PRINTING OFFICE: 1972